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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

2006 MTWCC 9

**IN THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA**

GAYLE PINNOW,

Petitioner,

v.

MONTANA STATE FUND,

Respondent/Insurer,

and

HAVERSON, SHEEHY & PLATH, P.C.,

Intervenor.

Cause No. WCC-2004-1190

**ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT**

Before the Court are cross-motions for summary judgment submitted by Petitioner Gayle Pinnow, Respondent Montana State Fund and Intervenor Halverson, Sheehy & Plath, P.C. A hearing on the respective motions was held on February 14, 2006. The issue to be determined is whether Pinnow's attorney, R. Russell Plath and the Halverson firm are entitled to a 20 percent contingent fee and costs pursuant to the signed agreement and settlement documents executed by the parties.

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1 **Background**

2 The facts upon which the respective motions are based are undisputed. On
3 May 24, 2004, Pinnow retained the Halverson firm to represent her on two workers'
4 compensation/occupational disease claims resulting from Pinnow's employment as a
5 card dealer for Kathy & Karen's Card Room. Pinnow's two claims were dated
6 November 5, 1998, claim 03-1999-03798-5, and April 5, 1999, claim 03-1999-
7 09294-9. The November 1998 claim involved a carpal tunnel condition. No specific
8 incident precipitated that claim. After bilateral carpal tunnel surgeries were completed,
9 Pinnow was able to return to work as a card dealer. After returning to work, Pinnow
10 complained of pain in her shoulder which resulted in her second claim. No specific
11 incident precipitated that claim, which resulted in bilateral shoulder surgeries. Although
12 a functional capacity evaluation indicated Pinnow could return to light or medium duty
13 work and three job descriptions were approved, Pinnow has apparently not returned to
14 work. Pinnow was also involved in a motor vehicle accident in 2003 which increased her
15 ongoing pain. Pinnow's treating physician provided her with a 19 percent impairment
16 rating, and settlement discussions ensued.

17 The Attorney Retainer Agreement signed by Pinnow in May 2004 was the
18 standard agreement prepared by the Montana Department of Labor and Industry for use
19 by attorneys representing claimants having workers' compensation claims arising under
20 the laws of the State of Montana. Pinnow agreed to representation under Option A which
21 provides a 20 percent contingent fee on settled claims and a 25 percent contingent fee
22 on benefits awarded by court order. In June 2004, the Montana Employment Relations
23 Division of the Department of Labor and Industry issued a letter stating that the Attorney
24 Retainer Agreement signed by Pinnow had been approved for Option A pursuant to
25 Section 39-71-613, MCA, and the administrative rules of Montana.

1 On February 17, 2005, a settlement conference took place before Hearing
2 Examiner Jay Dufrechou. As a result of the conference, both of Pinnow's claims were
3 settled for a combined lump-sum payment of \$125,000. On February 17, 2005, a
4 Stipulation for Settlement was executed by Pinnow and the Halverson firm. The
5 stipulation was also signed by attorney Mike Heringer on behalf of the State Fund. The
6 stipulation specifically referenced both claims by claim number, and granted Pinnow a
7 combined settlement of \$125,000. The stipulation required the State Fund to pay all
8 outstanding medical liens, and left Pinnow's medical benefits open to January 31, 2005.
9 On February 22, 2005, then Workers' Compensation Judge Mike McCarter issued his
10 Order and Judgment dismissing the matter with prejudice.

11 At some point in time after the February 22, 2005, judgment was entered,
12 Pinnow contacted Judge McCarter to repudiate the settlement and to deny attorney fees
13 to the Halverson firm. While's Pinnow's letter to the court is dated March 10, 2005, it
14 was not filed until April 4, 2005. As a result of Pinnow's request to repudiate the
15 settlement, Plath filed a March 31, 2005, notice with the Employment Relations
16 Division withdrawing as counsel for Pinnow and placing a lien for attorney's fees in the
17 amount of \$25,000 (20 percent x \$125,000) plus costs advanced in the amount of
18 \$1,906.04 against the settlement proceeds. Plath also returned the unsigned settlement
19 checks to the court.

20 On April 20, 2005, Judge McCarter entered a minute entry which: (1)
21 authorized the withdrawal of Plath as attorney of record; (2) gave Pinnow until
22 April 25, 2005, to decide if she would repudiate the settlement; (3) ordered the State
23 Fund's attorney to hold the settlement checks totaling \$120,000 jointly payable to
24 Pinnow and Plath, as Pinnow had been sent a check for \$5,000; and, (4) treated Pinnow's
25 correspondence regarding attorney fees as a petition disputing fees, opened a new case

1 file, and proposed issuance of a scheduling order with respect to the attorney fee dispute
2 so that Plath had an opportunity to respond.

3 On April 27, 2005, Pinnow filed a letter confirming that she was rejecting
4 the settlement because she believed she was only settling the April 1999 shoulder claim
5 03-1999-09294-9, not both claims. She also claimed that her medical treatment should
6 be reopened so that she could receive additional surgery.

7 On May 3, 2005, the undersigned accepted jurisdiction of this matter from
8 former Judge McCarter. On November 10, 2005, the State Fund filed its motion
9 seeking to enforce the settlement and judgment. Thereafter, on November 22, 2005,
10 Pinnow mailed notice to the State Fund and to the Halverson firm that she was
11 withdrawing her objections to the terms of the stipulated settlement and judgment. In
12 her notice stating that she was accepting the \$125,000 settlement, Pinnow sought to
13 reserve the attorney fee dispute for further ruling by this Court. On November 30, 2005,
14 the Halverson firm filed a motion to intervene to resolve the attorney fee dispute. That
15 motion was granted in December 2005.

16 On December 5, 2005, Pinnow filed her separate motion for summary
17 judgment requesting that this Court rule in her favor on the attorney fee issue because of
18 the apparent failure of the Halverson firm to file a response to Pinnow's April 20, 2005
19 petition disputing the settlement within the time required pursuant to ARM 24.5.316(3)
20 and (4).

21 **Standard of Review**

22 Rule 24.5.329(1)(a) of the Workers' Compensation Court Rules provides
23 that a "party may . . . move for a summary judgment in the party's favor upon all or any
24 part of a claim or defense." The moving party bears a two-prong burden of establishing
25 the absence of any genuine issue of material fact, and entitlement to judgment as a

1 matter of law. Satterlee v. Lumberman Mut. Cas. Co., 2005 MT Wrk. Comp. LEXIS 69;
2 2005 MTWCC 55, citing Moore v. Does, 271 Mont. 162, 164, 895 P.2d 209, 210
3 (1995). If a petitioner fails to establish either prong, summary judgment must be denied.
4 Id. Here, there are no consequential facts which are in dispute, and this matter is ripe for
5 summary judgment.

6 Discussion

7 In its November 2005 brief, the State Fund argues that the
8 February 17, 2005, Stipulation for Settlement clearly delineates that Pinnow was settling
9 both claims, as both claims are clearly identified by their respective claim numbers. The
10 State Fund argues that Pinnow's attempted repudiation of the judgment was untimely
11 under the 20-day requirement for motions for reconsideration set forth in ARM
12 24.5.337 and the 30-day requirement for perfecting an appeal under ARM 24.5.348 and
13 Rule 72, M.R.Civ.P. However, Pinnow's March 10, 2005, letter was timely (even
14 though not filed until April 2005) and, by Order dated April 20, 2005, Judge McCarter
15 deemed Pinnow's letter a petition disputing fees. Therefore, Pinnow's motion was
16 timely.

17 The State Fund further argues that the February 2005 Stipulation for
18 Settlement is a valid contract and must be enforced. This Court agrees. Since there was
19 an unconditional offer and an unconditional acceptance, the \$125,000 settlement is valid
20 and enforceable. Lockhead v. Weinstein, 2003 MT 360, ¶ 9, 319 Mont. 62, ¶ 9, 81 P.3d
21 1284, ¶ 9. Pinnow acknowledged this fact in her November 2005 notice when she
22 accepted the settlement. Pinnow now wishes to only contest the 20 percent contingent
23 fee portion of the settlement. Because there has been an unconditional offer and
24 unconditional settlement as to attorney fees, based on Lockhead, Pinnow is bound by her
25 agreements. Id.

1 Pinnow argues that because the Halverson firm did not timely respond to
2 her April 20, 2005, petition contesting fees, her request should be granted pursuant to
3 ARM 24.5.316(3) and (4). Pinnow argues that she is entitled to summary ruling on her
4 motion because the Halverson firm failed to file a brief in response to her motion within
5 ten days. Id. However, as above-referenced, the Halverson firm was not allowed to
6 intervene in this action until its motion to intervene was granted in December 2005. By
7 that time, the State Fund had already filed a motion for summary judgment asking this
8 Court to grant attorney fees to the Halverson firm. Therefore, the time requirements set
9 forth in the administrative rules do not apply as the Halverson firm was not a party to this
10 action at the time Pinnow's motion was filed.

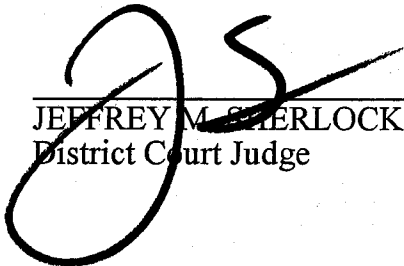
11 Finally, pursuant to Sections 39-71-613 and 614, MCA, this Court
12 believes the 20 percent contingent fee is reasonable. Pursuant to Section 39-71-614(3),
13 MCA, this Court believes that Pinnow and Plath entered a binding contingent fee
14 agreement and no mutual mistake of fact or any other defense has been raised upon
15 which this Court could void that binding agreement under the Lockhead decision above-
16 referenced. In addition, based on the record provided to the Court, it appears Plath was
17 able to obtain a very reasonable settlement of Pinnow's claims. A strong presumption
18 exists in favor of approving authorized contingent fee agreements, and Pinnow has failed
19 to meet her burden as to why the attorney fee agreement, signed stipulation and judgment
20 of the Workers' Compensation Court should not be honored. See, e.g., Plooster v.
21 Hughes Livestock Co., 256 Mont. 287, 292, 846 P.2d 976, 979 (1993); Wight v.
22 Hughes Livestock Co., 204 Mont. 98, 115, 664 P.2d 303, 312 (1983).

23 Conclusion

24 Based on the above, it is hereby ORDERED, ADJUDGED, and DECREED
25 that the State Fund's motion for summary judgment is hereby GRANTED, Pinnow's

1 motion for summary judgment is DENIED and the Halverson firm's motion is
2 GRANTED. The State Fund is hereby ordered to pay the Halverson firm \$26,906.04 (20
3 percent x \$125,000 plus costs of \$1,906.04) and the remainder to Pinnow.

4 DATED this 24 day of February, 2006.

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7 JEFFREY M. SHERLOCK
District Court Judge

8 pcs: The Clerk of Court is
9 directed to mail conformed
10 copies to Petitioner and counsel
11 of record.

12 T/JMS/PINNOW V MT STATE FUND WCC ORD MOTS SJ.WPD
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